



In the matter of International Patent
application no. PCT/AU2003/000954

- and -

In the matter of United States Patent
application serial number 10/523,153

Statutory declaration

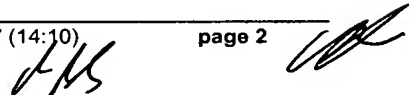
I, Carl David Harrap do solemnly and sincerely declare as follows:

- 1 I have previously made a declaration (my first declaration) in relation to this matter.
- 2 I received on 1 November 2006 the Decision of Petition for United States patent application serial number 10/523,153 refusing to accept the application without the signatures of Kevin Bryan Levine (Mr Levine) and Michael Robert Stewart (Mr Stewart).
- 3 I understand from reading the Decision of Petition, that an explanation is required for apparent differences in the delivery addresses for Mr Levine and Mr Stewart between the letters that I sent on 5 July 2006 and the addresses listed in the published international application.
- 4 For Mr Levine, I can only assume that the difference referred to is between the address on the "final notice" and the address on the international application. While the final notice has the suburb as "Bondi", the letter was addressed to "North Bondi" and I refer to the exhibit CDH2 of my first declaration.
- 5 North Bondi is a suburb that is adjacent to Bondi in Sydney, NSW and from my experience it is not unusual for people in Sydney to refer to the entire area, including both of these suburbs as "Bondi". I have checked local maps and confirmed that across Bondi and North Bondi there is only a single Roe Street. Accordingly, I have no doubt that Australia Post delivered the final notice to the same address as that listed in the published international application for Mr Levine.
- 6 In relation to Mr Stewart, Glebe is a suburb that is adjacent to Forest Lodge in Sydney, NSW. I have checked local maps and confirmed that across Glebe and Forest Lodge there is only a single Foss Street. Accordingly, I have no doubt that Australia Post delivered the final notice to the same address as that listed in the published international application for Mr Stewart.
- 7 I also understand from reading the Decision of Petition, that further information is required as to the attempts to deliver the correspondence sent to Mr Levine and Mr Stewart. The examiner refers to the possibility of the inventors not being at these residences when the correspondence was delivered.
- 8 I can explain that in NSW, Australia Post attempts to deliver registered mail items during ordinary working hours. However, if the delivery is unsuccessful, for example due to no-one being at home, it leaves a card at the address that notifies the occupant of the existence of the registered mail and requests that the addressee pick up the correspondence at a local post office. If the occupant does not pick up the correspondence, at least one or two further notices are left at the address, the last notice being a "final notice".
- 9 In relation to Mr Levine, following our specific request, we received a facsimile from the Bondi Beach Post Office saying that they delivered the first card on 7 June 2006 and a

second card on 18 July 2006. A copy of the facsimile is attached as exhibit CDH5. The writing in the bottom left hand corner is writing by my assistant, Helen Giameos, who also in July 2006 attempted to find a telephone number for Mr Levine by searching a telephone directory and phoning directory assistance. The final notice that I attached in my first declaration is dated 24 July 2006. While I do not have a letter from a post office in relation to the letter addressed to Michael Stewart, with reference to paragraph 8 of this declaration, I firmly believe that a similar process would have been followed for his address.

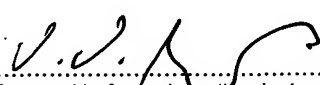
- 10 After I signed and sent my first declaration, I received the correspondence to Mr Stewart back from Australia Post as "unclaimed". Australia Post also reported that following delivery of the final notice, the letter to Mr Levine was delivered. I attach as exhibit CDH6 a certified copy of the "Delivery Confirmation – Advice Receipt", which reports delivery on 28 July 2006. As is required by Australia Post for registered mail items, the recipient must sign on delivery. While I have no special experience or expertise in verifying signatures, the signature of the recipient on the "Delivery Confirmation – Advice Receipt" looks very similar to me to the witnessed signature of Kevin Levine in the Deed of Release attached as exhibit FF3 of the declaration of Frank Favretto that has been filed in relation to this matter.
- 11 After I received the Decision of Petition, I asked Iain Bartram if he was aware of any further ways to contact the two inventors who have yet to sign a declaration and power of attorney for this application. Iain Bartram returned to me on 16 November 2006 saying that he had determined that Kevin Levine's home address is 65A Roe Street, North Bondi, NSW, 2026 and that his telephone number was 02 9371 8089.
- 12 After several attempts at various time during the day with only an answering machine picking up, I managed to speak to a woman on the number that Iain Bartram gave me at about 8.20 pm on 22 November 2006. I asked the woman if I could speak with Kevin Levine. The woman said that Kevin was at home but was busy at the moment. The woman then asked who I was. I told her my name, that I was from Freehills Patent & Trade Mark Attorneys and gave her my contact telephone number. The woman said that Kevin would be available in about half an hour and that she would ask him to give me a call. I tried calling at 9.10 pm and 9.25 pm and both times an answering machine picked up. I did not leave a message.
- 13 I tried calling Mr Levine again on 23 November 2006 at approximately 8.25 pm and left a message on the answering machine, leaving my work phone number and mobile phone number. I explained in the message that I was attempting to contact Kevin Levine to discuss with him getting his signature on a form for filing with the United States Patent Office in relation to a patent application that related to him being an inventor of the technology described in the application. I tried again at about 8.30 am and 8.30 pm on 28 November 2006, leaving a second message when calling at 8.30 am again providing my work and mobile telephone numbers. From 28 November 2006 onwards I periodically have attempted to contact Kevin at the number listed above at various times during the day and evening, leaving messages on the answering machine that picks up. The message on the answering machine includes a welcome "Welcome to the Levine residence, please leave your name and number, we'll get back to you as soon as we can".
- 14 I hereby declare that all statements made herein of my own knowledge are true, and that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such wilful false statements may jeopardise the validity or enforceability of the application or any patent issued thereon.

And I make this solemn declaration by virtue of the Australian Statutory Declarations Act 1959 and subject to the penalties provided by that Act for the making of false statements in statutory




declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at Sydney
this 30th
day of March
2007, before me:


Signature of person before whom the declaration is made

PAUL ALAN SAVAGE
Title of person before whom the declaration is made

Solicitor; NSW; Australia


Signature of person making the declaration

Carl David Harrap
Full name of declarant



In the matter of International patent application no. PCT/AU2003/000954

- and -

In the matter of United States patent application serial number 10/523,153

Statutory declaration

I, Iain Bartram, a citizen of Australia of 37 Alexander Street, Manly, NSW, 2095, Australia do solemnly and sincerely declare as follows:

1. I am currently the Chief Financial Officer of ConnXion Limited (ConnXion) and have been in this position since August 2005.
2. When I joined ConnXion in August 2005 I was advised of the issue of needing the signatures of Michael Robert Stewart (Mr Stewart) and Kevin Bryan Levine (Mr Levine) on a declaration and power of attorney form in relation to United States patent application number serial number 10/523,153 (the US patent application).
3. I have read the declaration of Frank Anthony Favretto (Mr Favretto) filed in relation to this matter and can confirm from the records of ConnXion his statement in paragraph 1 of his declaration that ConnXion was previously known as Trade Wind Marketing Pty Limited and can also confirm his statements in paragraphs 2 and 3 of his declaration that the seven inventors were employed by Trade Wind Marketing Pty Limited.
4. When advised of the issue of needing the signatures of Mr Stewart and Mr Levine, I was told by Mr Favretto that neither Trade Wind Communications Limited nor Trade Wind Marketing Pty Limited knew of the whereabouts or how to contact Mr Stewart or Mr Levine.
5. Since August 2005 I have tried to contact Mr Stewart in various ways. One way was to ask employees of ConnXion who were colleagues of Mr Stewart when he was employed by ConnXion as to whether they knew of his whereabouts. One of these employees, who is now a former employee, was Alex Omilian. Alex Omilian (Mr Omilian) has told me that he has remained in contact with Mr Stewart from the time that they were both employed by ConnXion and worked on the invention described in the US patent application. Mr Omilian has also told me that he was the one that arranged the meeting between Mr Favretto and Mr Stewart that Mr Favretto refers to in paragraph 11 of his declaration.
6. Mr Omilian said to me that he knows that Mr Stewart has moved to London and knows Mr Stewart's current contact details in London. However, when I asked him whether he was prepared to give these to me, Mr Omilian replied that he had been told by Mr Stewart that he does not want to have any communication from ConnXion and wants to make it as difficult as possible for us to pursue the patent application, which I understood to be a reference to the family of patent applications relating to and including the US patent application.
7. In late 2006 I purchased a UK electoral role and noted the address of every listing that I believed could be a listing for Mr Stewart in London. This resulted in a list of 20 names. I presented this list to Mr Omilian, who again said that he was not prepared to give me Mr

Stewart's contact details, but that he was prepared to tell me that none of the addresses or names on my list matched the address where Mr Stewart is presently located. I can therefore only assume that Mr Stewart has not registered on the UK electoral role.

8. I am not aware of any other avenue to contact Mr Stewart. I can confirm through my inquiries that none of ConnXion, Trade Wind Communications Pty Ltd, Trade Wind Marketing Pty Limited or Trade Wind Group Pty Ltd have knowledge of how to contact Mr Stewart or knowledge of any other reasonable avenue of inquiry that may result in determination of his location. In any case, I have no reason to doubt the accuracy of Mr Omilian's statement that even if I did manage to find Mr Stewart, he would refuse to cooperate in any way.
9. I have also made inquiries as to the location and whereabouts of Kevin Levine. As a result of those inquiries, I received confirmation from an employee of ConnXion that Kevin Levine is still resident at 36a Roe Street, North Bondi, 2026, NSW, Australia and that his phone number was 02 9371 8089. I asked Carl Harrap, ConnXion's patent attorney, to attempt to contact Kevin Levine.
10. I hereby declare that all statements made herein of my own knowledge are true, and that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such wilful false statements may jeopardise the validity or enforceability of the application or any patent issued thereon.

And I make this solemn declaration by virtue of the Australian Statutory Declarations Act 1959 and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at Sydney
this
30th day of March
2007, before me:

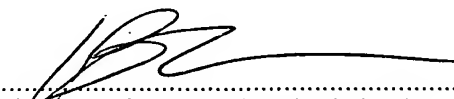


Signature of person before whom the declaration is made

Carl David Harrap

Registered Patent Attorney

Title of person before whom the declaration is made



Signature of person making the declaration

IAIN BARTRAM

Full name of declarant